

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

MAY -6 2008

COURT OF APPEALS
DIVISION TWO

CRAIG B.,

Appellant,

v.

ARIZONA DEPARTMENT OF
ECONOMIC SECURITY and
WESTON B.,

Appellees.

2 CA-JV 2008-0003
DEPARTMENT B

MEMORANDUM DECISION

Not for Publication

Rule 28, Rules of Civil

Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17844900

Honorable Charles S. Sabalos, Judge

AFFIRMED

Jacqueline Rohr

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Michelle R. Nimmo

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

E C K E R S T R O M, Presiding Judge.

¶1 Lawrence Craig B. (“Craig”) challenges the juvenile court’s order terminating his parental rights to his son, Weston B. He contends there was insufficient evidence to prove any of the statutory grounds for termination alleged by the Arizona Department of

Economic Security (ADES) and that insufficient evidence supported the court's finding that terminating his rights was in Weston's best interests. We affirm.

¶2 Approximately one day after his birth in May 2006, Weston was removed from his parents' custody because he had been exposed to illegal drugs in utero. In September 2006, Craig admitted the allegations in an amended dependency petition, including that he had been "unable to protect" Weston from his mother's substance abuse and that Child Protective Services (CPS) was "concerned that [Craig] may have a substance abuse problem" as well. Although Craig initially denied it, he eventually admitted to his evaluating psychologist that he had a significant history of illegal drug abuse. The juvenile court approved a case plan calling for family reunification. It required Craig to participate in various substance-abuse treatment services, including drug testing.

¶3 At all dependency review hearings and the permanency planning hearing, the juvenile court found that Craig was not in compliance with the case plan. Following the permanency hearing in August 2007, the court directed ADES to file a motion to terminate Craig's parental rights. A contested termination hearing was held in November and December 2007. The court's minute entry ruling includes a detailed recitation of the evidence. The court found, among other things, that Craig had "failed to comply in any meaningful way with the case plan adopted by the Court" and noted specifically that Craig had:

failed to attend or cancelled numerous appointments with service providers, was inconsistent in his visitation with Weston, did not attend parenting classes, did not participate in substance abuse counseling and failed to complete one hundred and fifty-

seven (157) required drug tests over a fourteen (14) month period of time. On the eight (8) occasions when he did submit to drug testing, he tested positive for methamphetamine and/or amphetamine and/or marijuana six (6) times. [Craig]’s hair follicle test conducted on April 18, 2007, reflected the presence of methamphetamine in an amount forty-four (44) times higher than the minimum threshold evidencing the use of this dangerous drug.

¶4 The court concluded that, among other grounds for termination, ADES had proven that termination was warranted under A.R.S. § 8-533(B)(8)(b), which requires proof that the child has been in a court-ordered, out-of-home placement for at least fifteen months; that, despite ADES’s “diligent effort to provide appropriate reunification services[,] . . . the parent has been unable to remedy the circumstances that cause the child to be in an out-of-home placement;” and, finally, that “there is a substantial likelihood that the parent will not be capable of exercising proper and effective parental care and control in the near future.” The court also found that severing Craig’s rights was in Weston’s best interests.

¶5 On appeal, Craig does not challenge the juvenile court’s recitation of the evidence or any of its specific factual findings. He contends only that ADES failed to identify and provide sufficient reunification services and, therefore, failed to prove either the statutory grounds for severance or that severance was in Weston’s best interests. We disagree.

¶6 We will not disturb a court’s order terminating a parent’s rights unless the order is clearly erroneous, meaning it is unsupported by any reasonable evidence when that evidence is viewed in the light most favorable to upholding the order. *See Michael J. v. Ariz. Dep’t of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000); *Jesus M. v. Ariz.*

Dep't of Econ. Sec., 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). We do not reweigh the evidence. *See Jesus M.*, 203 Ariz. 278, ¶ 4, 53 P.3d at 205. Any statutory ground for termination must be established by clear and convincing evidence. A.R.S. § 8-537(B); *Mary Ellen C. v. Ariz. Dep't of Econ. Sec.*, 193 Ariz. 185, ¶ 25, 971 P.2d 1046, 1051 (App. 1999). If any one statutory ground on which the court ordered termination has been sufficiently proved, we need not consider claims pertaining to other grounds. *Jesus M.*, 203 Ariz. 278, ¶ 3, 53 P.3d at 205. The finding that termination is in a child's best interests must be supported by a preponderance of the evidence. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005).

¶7 Craig bases his argument regarding the statutory grounds for severance on a notation in the written report of psychologist Lorraine Rasp-Rollins that “[p]sychiatric consultation may be helpful to determine if medication would be helpful” to Craig “in striving to overcome his substance abuse/dependence problems.” He argues that, because he was not provided with a psychiatric evaluation, ADES did not make diligent efforts to reunify him with Weston.

¶8 But “[A]DES is not required to provide every conceivable service or to ensure that a parent participates in each service it offers.” *In re Maricopa County Juv. Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994); *see also Mary Ellen C.*, 193 Ariz. 185, ¶ 37, 971 P.2d at 1053. Moreover, Craig ignores the qualification Rollins put on her statement—that psychiatric consultation would only be helpful “if [Craig] makes a genuine effort to stop substance abuse/dependence.” The record is replete with evidence

that Craig never made a genuine effort to address his substance abuse problem, and he identifies no other services ADES could have provided.¹ Therefore, we conclude sufficient evidence supports the juvenile court’s determination that ADES had made sufficient efforts to reunify the family.

¶9 Regarding the juvenile court’s best-interests finding, Craig argues that the court “failed to take into full account [his] biological connection” to Weston and that ADES’s failure to provide sufficient reunification services prevented a valid determination that termination was in Weston’s best interests. However, Craig has not identified, nor have we found, any support in the record for his contention that the juvenile court failed to consider Craig’s biological connection with Weston. And, as we have already explained, the record supports the court’s determination that sufficient reunification services were, in fact, provided.

¶10 To establish that termination was in Weston’s best interests, “ADES was required to show that [Weston] would derive an affirmative benefit from termination or incur a detriment by continuing in the relationship.” *Ariz. Dep’t of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d 943, 945 (App. 2004). “The existence of a current adoptive plan is one well-recognized example of such a benefit.” *Id.* At the time of the termination hearing, Weston had been placed with relatives who were willing to adopt him. Further, a

¹In his argument regarding the juvenile court’s best-interests findings, Craig implies the visitation he was offered was inadequate and he was not provided proper instruction in parenting skills. But he does not explain how increased visitation or additional parenting classes would have affected his ability to remedy his drug abuse issues, which were certainly a significant, if not the primary, cause of Weston’s out-of-home placement.

clinical liaison for Weston testified that young children like Weston “need a permanent relationship early on that is going to be a long-term relationship.” She also opined that it was in Weston’s best interests to be adopted by the placement family.” Thus, the juvenile court’s determination of Weston’s best interests is supported by the record.

¶11 Accordingly, we affirm the juvenile court’s order terminating Craig’s parental rights to Weston.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

PHILIP G. ESPINOSA, Judge

GARYE L. VÁSQUEZ, Judge